

REMARKS

Claims 1-8 are pending. Claim 3 has been amended.

Claims 1-8 are rejected. Claim 3 is rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Aberman (U.S. Patent Publication No. 2003/0225656) in view of Bodie (Investments, 4th Ed., Irwin McGraw-Hill 1999).

Rejection of Claim 3 under 35 U.S.C. § 112, Second Paragraph

Claim 3 is rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, the Examiner asserts that “appeal” is indefinite. Accordingly, claim 3 has been amended to delete “that appeal to holders.” Therefore, it is respectfully requested that the rejection under 35 U.S.C. § 112 be withdrawn.

Rejection of Claims 1-8 under 35 U.S.C. § 103(a)

Claims 1-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Aberman (U.S. Patent Publication No. 2003/0225656) in view of Bodie (Investments, 4th Ed., Irwin McGraw-Hill 1999). This rejection is respectfully traversed.

On page 4 of the Office Action, the Examiner recognizes that Aberman does not teach or suggest that “the trust purchases shares of common stock with the first proceeds; the trust issuing a call spread portfolio on the purchased shares of common stock; the trust receiving second proceeds from the issuance of the call spread portfolio; the trust retaining the sufficient funds by purchasing governmental treasury securities with the second proceeds; purchasing from a first entity the shares of common stock of a second entity; wherein the call spread portfolio is issued by the trust to the first entity, and the second proceeds are received by the trust from the first entity; and wherein the trust is registerable as a closed-end investment entity under the U.S. Investment Company Act of 1940.” Bodie fails to cure the deficiencies of Aberman.

With regard to claim 1, the Examiner asserts that Bodie teaches or suggests “the trust purchasing shares of common stock with the first proceeds.” On page 4 of the Office Action, the Examiner cites to Bodie for a recitation that “investors purchase shares of common stock with first proceeds,” citing pages 626-27 of Bodie for a discussion of “covered calls.” According to Bodie, a covered call position is the purchase of a share of stock with a simultaneous sale of a call on that stock. Bodie at 626. However, Bodie fails for two reasons. First, Bodie recites “investors,” not a “trust,” as recited in claim 1. Because of the complex investment relationship in claim 1, the Examiner cannot meet a *prima facie* case of obviousness without showing the steps that each party must perform. Second, according to Bodie, the covered call position is for the same stock. In contrast, in claim 1, the trust receives first proceeds from the issuance of the ***mandatorily convertible securities*** and purchases shares of ***common stock*** with the first proceeds. On page 3 of the Office Action, the Examiner equates mandatorily convertible securities to “preferred stock with a forward purchase contract obligation.” So even the Examiner recognizes that preferred stock with a forward purchase contract obligation is not the same as common stock. Accordingly, the purchase of common stock with the first proceeds is not a covered call as recited by Bodie. Therefore, Aberman and Bodie fail to teach or suggest each and every element of claim 1.

The Examiner has failed to establish the required *prima facie* case of unpatentability for independent claim 1 and similarly has failed to establish a *prima facie* case of unpatentability for claims 2-8 depending on claim 1, and which recite further specific elements that have no reasonable correspondence with the references. Therefore, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

The undersigned representative respectfully submits that this application is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that the prosecution might be advanced by discussing the application with the undersigned representative, in person or over the telephone, we welcome the opportunity to do so. In addition, if any additional fees are required in connection with the filing of this response, the Commissioner is hereby authorized to charge the same to Deposit Account No. 504402.

Respectfully submitted,

Date: July 7, 2008
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006-4706
(202) 737-0500

By: /Eric L. Sophir, Reg. No. 48,499/
Eric L. Sophir
Registration No. 48,499